IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.2172 of 2004

Date of Decision: January 24, 2007

M/s National Finance Company

...Petitioner

VERSUS

The State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Sandeep Moudgil, Advocate,
for the petitioner.

Mr.Vikas Chaudhary, AAG, Haryana,
for the State.

None for respondent No.2.

Mr.Ashit Malik, Advocate,
for respondents No.3 and 4.

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RANJIT SINGH, J.

Jagat Ram and Kura Ram, father and son, got a truck financed for a sum of Rs.1,44,000/- from M/s National Finance Company on hire purchase basis. Kura Ram respondent stood guarantor for repayment of the loan. The

loan was to be paid in 22 equal monthly instalments. It is alleged that the respondents mis-appropriated the truck by selling the same, though full instalments were yet to be paid. This led to filing of a complaint before Magistrate by the petitioner company. The Magistrate sent this complaint to the police for investigation under Section 156 (3) Cr.P.C. After investigation, police filed a cancellation report viewing this to be a dispute of civil nature and which, as per police, did not involve any criminal consequences. The notice of the cancellation report was given to the complainant/petitioner company and it appeared and protested against the cancellation report. Court permitted the petitioner company to examine a witness as a preliminary evidence and then vide its order dated 7.5.2003, the Court viewed that a prima-facie case for an offence punishable under Sections 406 and 420 IPC was made out against the accused-respondents. It accordingly summoned them. Aggrieved against this summoning order, the respondents filed a revision before the Sessions Court, which allowed the revision and set-aside the summoning order. The Revisional Court held that the police report could not be converted into a complaint and if the trial Magistrate was not to accept the cancellation report, then it could have directed the complainant to file a separate complaint. The Revisional Court further held that without filing of the complaint, the accused-respondents could not have been summoned. The Court, however, left liberty with the complainant to file a fresh complaint, if it was not satisfied with the investigation made by the police. This order is now impugned in the present revision by the complainant-petitioner company.

The counsel for the petitioner contends that the Sessions Court has wrongly set-aside the summoning order as this was not case where FIR was converted into a complaint. It could not be pointed out from the order of the Magistrate that the FIR was converted into a complaint.

It appears that the Court mainly got swayed by the submission that the FIR was converted into a complaint, which could not be done. In this regard, case of Rajinder Singh & Ors. v. State of Punjab, 2003(2) Criminal Court Cases 5 is referred before the Court, in which it is observed that police report can not be converted into a complaint. The court gave liberty to file a fresh complaint if the petitioner was not satisfied with the investigation. Rajinder Singh's case (supra) was a case where a complaint was made to the police and the FIR was registered. The police had investigated the case and thereafter had submitted a report under Section 173 Cr.P.C. recommending that there was no evidence against the petitioner. While not accepting the cancellation report, as submitted by the police, the Magistrate directed that the FIR could be treated as a complaint. In this background, it was observed that the complainant could be asked to file a separate complaint rather than directing that the FIR be converted into a complaint. The ratio of law laid down in Rajinder Singh's case (supra), as such, may not apply to the facts of the present case. Rather Hon'ble Supreme Court in Tula Ram and others v. Kishore Singh, AIR 1977 Supreme Court 2401 has clearly ruled that where order of investigation is made under Section 156 (3) Cr.P.C. on a complaint and final report is submitted by the police, the Magistrate can issue process under Section 204 after recording

statement of complainant and his witnesses. In Tula Ram's case (supra), it was contended that the Magistrate after having referred the matter for investigation to the police was not empowered to revive the complaint when the report was in favour of the accused. It was further urged that the Magistrate could at the most order further investigation, but could not have acted on the complaint, which merged in the investigation by the police and lost its complete identity. After analysing the legal position in detail, the Hon'ble Supreme Court held as under:-

> "In these circumstances we are satisfied that the action taken by the Magistrate was fully supportable in law and he did not commit any error in recording the statement of the complainant and the witnesses and thereafter issuing process against the appellants. The High Court has discussed the points involved threadbare and has also cited number of decisions and we entirely agree with the view taken by the High Court. Thus on a careful consideration of the facts and circumstances of the case the following legal propositions emerge:
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> 1. That a Magistrate can order investigation under S.156 (3) only at the pre-cognizance stage, that is to say, before taking cognizance under Sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under Section 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by

the police which would be in the nature of an enquiry as contemplated by Sec.202 of the Code.

2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police before taking cognizance under S. 156 (3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 as described above."

While deciding Tula Ram's case (supra), the Hon'ble Supreme Court referred to the case of Devarpalli Lakshminarayana Reddy Vs. V.Narayana Reddy, AIR 1976 SC 1672 to notice that power to order police investigation under Section 156 (3) Cr.P.C. is different from the power to direct investigation conferred by Sec.202 (1). It is also observed that these two sections operate in distinct spheres at different stages. As per the Hon'ble Supreme Court, the first is exercisable at the pre-cognizance stage and the second at post-cognizance stage, when the Magistrate is in seisin of the case. It was further observed that the power under Section 156 (3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). In this regard, reference can also be made to the cases of Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986 and Jamuna Singh v. Bhadai Sah, AIR 1964 SC 1541, wherein it is held that if a Magistrate applies his mind for the purpose of ordering investigation under Section 156(3) or issues a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence. This being the position under law, it would always be open to the Magistrate to take cognizance of the complaint and dispose it of in accordance with law, that is to say according to the provisions of Sections 190, 200 and 202.

In view of this law laid down by the Hon'ble Supreme Court, the impugned order passed by the Lower Revisional Court cannot be sustained. Even otherwise the order passed by the Magistrate apparently give no indication that the FIR is ordered to be converted into a complaint. The impugned order passed by the

Addl.Sessions Judge, Karnal is accordingly set-aside. The case is remanded back to a Court of Addl.Sessions Judge, Karnal for deciding the same afresh in accordance with law and by taking in view the legal position as summarised above. While deciding the case, the view expressed in Anil Kumar Sah and others Vs. Nagendra Singh, 1991 Crl.L.J.421 and Daleep Singh Vs. Smt.Magom, 1996 Crl.L.J.190 may, if found applicable, be considered.

January 24, 2007 (RANJIT SINGH)
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